IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

APPEAL NO.566 OF 2001

IN

WRIT PETITION NO.2040 OF 1998

...

Mazgaon Dock Limited ...Appellant

v/s.

Shri Shivbrat Jagroop Mishra
and anr. ...Respondents

...

AND

APPEAL NO.567 OF 2001

IN

WRIT PETITION NO.2187 OF 1998

...

Mazagaon Dock Limited ...Appellant

v/s.

Suresh R. Salunke & ors. ...Respondents

...

Mr.J.P.Cama with Mr.R.S.Pai and Mr.P.M.Palshikar i/b Sanjay Udeshi & Co. for the Appellants.

Mr.R.D.Bhat for the intervenor.

None for the Respondents.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 1ST OCTOBER, 2007

P.C.:

1. So far as Appeal No.566 of 2001 is concerned, the relevant facts are that the Respondent No.1 filed a complaint before the Industrial Court being complaint

ULP No.278 of 1997 under the Unfair Labour Practices Act claiming that the Mazgaon Dock Ltd. is guilty of committing unfair labour practice.

. In that Complaint an objection was raised to the maintainability of the complaint by the Respondent/Employer Mazgaon Dock Ltd. claiming that because in relation to Mazgaon Dock which is an industry, the Central Government is the appropriate government and therefore the complaint under the Unfair Labour Practices Act is not maintainable. In the objection the Employer claimed that the Central Government is the appropriate Government relying on the judgment of the Supreme Court in the case of Air India Statutory Corporation & ors. v/s. United Labour Unions and ors, AIR 1997 SC 645. The Industrial Court held that in view of the judgment of the Supreme Court in the Air India Statutory Corporation Central Government is the appropriate government, however, in view of the notification issued by the Central Government dated 3rd July, 1998 delegating its power as appropriate government to the State Government, the State Government is the appropriate Government and therefore, the provisions of the Unfair Labour Practices Act are applicable and

the complaint is maintainable.

2. That decision was challenged by the Employer by filing Writ Petition No.2040 of 1999. That Writ Petition was decided by the learned single Judge of this Court by order dated 30th April, 2001. The learned single Judge upheld the decision of the Industrial Court. Appeal No.566 of 2001 is filed challenging that judgment.

3. A complaint under the Unfair Labour Practices Act was filed against the Mazgaon Dock Ltd. by two complainants namely Suresh R. Salunke and Narayan R. Pednekar alleging that Mazgaon Dock/employer is guilty of certain unfair labour practice. In that complaint, an objection was raised on behalf of the Employer that in relation to Mazgaon Dock the Central Government is the appropriate Government and therefore, the complaint under the Unfair Labour Practices Act is not maintainable. That objection was decided by order dated 24-8-1998 by the Industrial Court. The Industrial Court held that the Central Government is the appropriate government and therefore the provisions of Unfair Labour Practices Act are not applicable. The original complainants

challenged that decision of the Industrial Court in Writ Petition No.2187 of 1998. That Writ Petition has been decided by the learned single Judge of this Court alongwith Writ Petition No.2040 of 1998 referred to above. By common judgment passed in Writ Petition No.2040 of 1998 and Writ Petition No.2187 of 1998 the learned single Judge set aside the order passed by the Industrial Court and held that the State Government is the appropriate government because of the notification issued by the Central Government dated 3rd July, 1998, and therefore, the complaint under the Unfair Labour Practices Act was maintainable.

4. As observed above, Writ Petition No.2040 of 1998 and Writ Petition No.2187 of 1998 were decided by common judgment. Appeal No.567 of 2001 is directed against the judgment delivered by the learned single Judge in Writ Petition No.2187 of 1998.

5. Thus, Appeal No.566 of 2001 and Appeal No.567 of 2001 can be conveniently disposed of by a common order.

6. It is common ground that in the objection filed

by the Appellant Mazgaon Dock before the Industrial Court, it was claimed that in relation to the Mazgaon Dock Central Government is the appropriate government on the basis of judgment of the Supreme Court in Air India Statutory Corporation referred to above. It is also common ground that by a judgment of the Supreme Court in the case of Steel Authority of India Ltd. v/s. National Union Water Front Workers & ors. , 2001 III CLR 349 the Supreme Court has overruled its judgment in Air India Statutory Corporation's case. But that judgment has been prospectively overruled by the Supreme Court. The Supreme Court in paragraph 121(4) has observed thus:

> (4) We over-rule the judgment of this Court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/any court including High Court for absorption of contract labourer following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

7. Thus, in view of the judgment of the Supreme Court in the case of Steel Authority of India (supra), its judgment in Air India's case stands over-ruled, save and except those matters which have been decided pursuant to the judgment in Air India's case and that decision has become final. So far as these matters are concerned, when the judgment was delivered by the Supreme Court either Writ Petitions before the learned single Judge were pending or these Appeal were pending, therefore, adjudication in terms of the judgment of the Supreme Court in Air India's case had not become final, and therefore, the law laid down by the judgment of the Supreme Court in the Steel Authority of India's case will have to be applied. If that is so done, as claimed by the Appellant in its objection filed before the Industrial Court, it will not be justified in claiming that Central Government is the appropriate government in relation to Mazgaon Dock because of the judgment of the Supreme Court in Air India's case.

8. The learned Counsel for the Appellant, however, submits that Mazgaon Dock can still claim that in relation to it the Central Government is the

appropriate government in view of the judgment of this court in Appeal No.1094 of 1997 (M/s.Sylvester & Co. v/s. Their Workman) dated 13th June, 2007. It is, however, an admitted position that this contention is being raised for the first time before this court and obviously was not raised either before the Industrial Court or before the learned single Judge. Therefore, we cannot decide this contention, which at best can be said to be a mixed question of law and fact, and is being raised for the first time before this court. Therefore, in our opinion, appropriate order would be to permit the Appellant to raise this contention first before the Industrial Court.

9. In our opinion, however, we cannot dispose of the Appeals merely by permitting the Appellant to raise the question that according to it Central Government continues to be the appropriate Government in relation to it, because of the aforesaid judgment of the Division Bench in the case of M/s.Sylvester & Co., because by the order impugned in these Appeals the learned single Judge has held that even though Central Government is the appropriate Government in relation to the Appellant, because of the

notification issued by the Central Government under Section 39 of the Industrial Disputes Act dated 3rd July, 1998 the State Government is the appropriate Government. In our view, the view taken by the learned single Judge that though the Central Government is the appropriate Government in relation to the Appellant, because of the notification dated 3rd July, 1998 the State Government becomes the appropriate Government is not the correct view.

10. The complaints have been filed under the MRTU & PULP Act. Sub-section (3) of Section 2 of the MRTU & PULP Act reads as under:-

> "Except as otherwise hereinafter provided, this Act shall apply to the industries to which the Bombay Industrial Relations Act, 1946, Bom.XI of 1947, for the time being applies, and also to any industry as defined in clause (j) of section 2 of the Industrial Disputes Act, 1947, XIV of 1947, and the State Government in relation to any industrial dispute concerning such industry is the appropriate Government under that Act."

Perusal of the above quoted provisions shows that in order to attract the application of the Unfair Labour Practices Act to the industrial dispute in relation to an industry, the State Government must be the appropriate Government in relation to that industry. Therefore, whenever in a complaint filed before the Court under the Unfair Labour Practices Act a question is raised in this regard, the court will have to hold an inquiry to find out whether in relation to the industry involved in the complaint, the State Government is the appropriate Government or not. The term "appropriate Government" is defined by Section 2(a) of the Industrial Disputes Act. It reads as under:-

> (a) "appropriate Government" means-
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> (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, or by a railway company (or concerning any such controlled industry as may be specified in this behalf by the Central Government) or in relation to an industrial dispute concerning (a Dock Labour Board established under Section

5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or (the Industrial Finance Corporation of India Limited formed and registered under the Companies Act, 1956 (1 of 1956) or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under Section 3A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (46 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under Section 5A and Section 5B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or (the Oil and Natural Gas Corporation Limited registered under the Companies Act, 1956 (1 of 1956), or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961),

or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16, of the Food Corporations Act, 1964 (37 of 1964), or (the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Limited or the Industrial Reconstruction Bank of India Limited), (the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987) or ((an air transport service, or a banking or an insurance company) a mine, an oil field,) (a Cantonment Board) or a major port, the Central Government, and)

(ii) In relation to any other industrial dispute, the State Government;

11. Perusal of the above definition shows that in relation to certain industries Central Government has been declared to be the appropriate Government and in relation to rest of the industries State Government has been declared as the appropriate Government. Thus, to find out whether in relation to the Industry involved in the complaint, State Government is the appropriate Government or not, firstly, inquiry will have to be made to find out what is the nature of the indutry involved, and then t find out by referring to the provisions of Section 2(a) of the Indian Disputes Act, whether in relation to that Industry, Central Government is the appropriate Government. If on such inquiry the Court finds that Central Government is not appropriate Government in relation to that industry, then a finding can be recorded that State Government is the appropriate Goverment. In the present case, the learned single Judge found that in relation to the industry, namely Mazgaon Dock, the Central Government is the appropriate Government as per the provisions of Section 2(a) of the Industrial Disputes Act, but he held that, because by a

notification issued under Section 39, the Central Government has delegated its powers as appropriate Government to the State Government, the State Government is the appropriate Government in relation to the Mazgaon Dock. For the purpose of deciding whether the Statement Government is the appropriate Government or the Central Government is the appropriate Government in relation to industry, provisions of Section 39 of the Act, in our opinion, are not relevant. Section 39 reads as under:-

> 39. Delegation of powers.- The appropriate Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act or rules made thereunder, shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also,-
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> (a) where the appropriate Government is the Central Government, by such officer or authority subordinate to the Central Government or by the State Government, or by such officer or authority subordinate to the

State Government, as may be specified in the notification; and

(b) where the appropriate Government is a State Government, by such officer or authority subordinate to the State Government as may be specified in the notification.

12. Perusal of Section 39 shows that it empowers the appropriate Government , if it is the Central Government to delegate its powers to the subordinate officers and also to the State Government and if the appropriate Government is the State Government to delegate its powers to the officer subordinate to it. By Section 39 powers of the appropriate Government are conferred on the authorities mentioned in Section 39. Section 39 does not designate those officers or government as appropriate Government. It is clear that even if the Central Government is the appropriate Government, even after delegating its powers to the officers subordinate to it, the Central Government will continue to be the appropriate Government and the officer to whom the powers are delegated will not become the appropriate Government. The officer will be merely exercising the power of

the appropriate Government. Same is the case, if the powers are delegated by the Central Government to the State Government. The appropriate Government will continue to be the Central Government though the State Government will be authorised as a delegate of the appropriate Government to exercise the powers of the Central Government.

13. When a statutory power is conferred on an authority and that authority is also authorised by the same statute to delegate that power to some other authority and in the exercise of that power, power is delegated then also the principal continues to enjoy the powers which have been delegated. In the case of Godavari S. Parulekar v/s. State of Maharashtra, AIR 1966 SC 1404, the Appellant had been detained by the order passed by the State Government under Rule 30 of the Defence of Indian Rules. It was contended on behalf of the Appellant, inter alia, that the State Government had earlier issued a notification delegating its power under Rule 30 to the District Magistrate and was so not competent to make an order of detention in question. Reliance was placed for this argument on the observations of the Judicial Committee in the case of Emperor v/s. Sibnath

Banerji, AIR 1945 Privy Council, 156. It was held by the Supreme Court that by issuing a notification in question the State Government had not denuded itself of the power to act under Rule 30. The Supreme Curt in paragraph 6 of its judgment in Godavari Parulekar's case has observed thus:-

> (6) In Huth v. Clarke (1890) 25 QBD 391) Wills. J. observed at p.395;
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> "Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."
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> In our opinion, by issuing the aforesaid notification the State Government has not denuded itself of the power to act under R. 30.

The Supreme Court in its judgment in the case of Roop Chand v/s. State of Punjab, AIR 1963 SC 1503, has considered the question when the Government delegates

its power to an officer subordinate to it and pursuant to the delegated powers the delegate exercises the power and makes an order, whether that order is an order of the officer or of the Government itself. The observations of the Supreme Court found in paragraph 11 of that judgment are relevant. They read as under:-

> 11. The question then arises, when the Government delegates its power, for example, to entertain and decide an appeal under S.21(4), to an officer and the officer pursuant to such delegation hears the appeal and makes an order, is the order an order of the officer of the Government? We think it must be the order of the Government. The order is made under a statutory power. It is the statute which creates that power. The power can, therefore, be exercised only in terms of the statute and not otherwise. In this case the power is created by S.21(4). That section gives a power to the Government. It would follow that an order made in exercise of that power will be the order of the Government for no one else has the right under the statute to exercise the power. No doubt

the Act enables the Government to delegate its power but such a power when delegated remains the power of the Government, for the Government can only delegate the power given to it by the statute and cannot create an independent power in the officer. When the delegate exercise the power, he does so for the Government. It is of interest to observe here that Wills J. said in Huth v. Clarke, (1890) 25 Q.B.D. 391 that "the word delegate means little more than an agent". An agent of course exercises no powers of his own but only the powers of his principal. Therefore, an order passed by an officer on delegation to him under S.41(1) of the power of the Government under S.21(4), is for the purposes of the Act, an order of the Government. If it were not so and it were to be held that the order had been made by the officer himself and was not an order of the Government- and of course it had to be one or the other- then we would have an order made by a person on whom the Act did not confer any power to make it. That would be an impossible situation. There can be no order except as authorised by the

> Act. What is true of S.21(4) would be true of all other provisions in the Act conferring powers on the Government which can be delegated to an officer under S.41(1). If we are wrong in the view that we have taken, then in the case of an order made by an officer as delegate of the Government's power under S.21(4) we would have an appeal entertained and decided by one who had no power himself under the Act to do either. Plainly, none of these things could be done.

The Supreme Court has, thus, held that the power exercised by the delegate is the power of the principal itself. It is, thus, clear that when statutory power is delegated, a delegate becomes authorised to exercise that power. The principal, however, continues to enjoy the power and act concurrently to exercise that power. What is the position of the delegate vis-a-vis the principal, who has delegated the power has been considered by the Supreme Court in its judgment in the case of Krishna Kumar v/s. Divisional Assistant Electrical Engineer & ors., (1979) 4 SCC 289. The observations of the Supreme Court found in paragraph 6 of that judgment,

in our opinion, are relevant. They read as under:-

> 6. Besides, delegation of the power to make a particular appointment does not enhance or improve the hierarchical status of the delegate. An Officer subordinate to another will not become his equal in rank by reason of his coming to possess some of the powers of that another. The Divisional Engineer, in other words, does not cease to be subordinate in rank to the Chief Electrical Engineer merely because the letter's power to make appointments to certain posts has been delegated to him.

It is, thus, clear that when powers of appropriate Government in relation to industry, where the Central Government is the appropriate Government, are delegated by the Central Government to the State Government, though the State Government becomes competent to exercise powers, it does not become appropriate Government and in relation to that industry the Central Government continues to be the appropriate Government. It is clear from the provisions of sub-section 3 of Section 2 of M.R.T.U.

& P.U.L.P. Act quoted above that when considering the question for the purpose of that provision whether the State Government is the appropriate Government in relation to particular industry, what is to be considered is whether the State Government within the meaning of Section 2(a) of the Industrial Dispute Act is the appropriate Government in relation to that industry and not whether though the Central Government is the appropriate Government, the State Government is also entitled to exercise the power of the appropriate Government. We find that similar question in relation to the provisions of Section 39 and the provisions of Contract Labour (Regulation and Abolition) Act 1970 has been considered by the Division Bench of Karnataka High Court in its judgment in the case of Workmen of Bagalkot Udyog Ltd. And Bagalkot Udyog Ltd. and ors., 2001 (I) LLJ, 621. The observations of the Division in paragraph 11 of that judgment are relevant. They read as under:-

> 11. It is amply clear from Section 39 of the I.D. Act and the above notification issued by the Central Government that the State Government has been delegated with certain

> powers exercisable by the Central Government under the I.D. Act and nothing beyond. Pursuance to the above provisions, the State Government's status as relating to the cement industry remains that of a delegatee of the Central Government being the appropriate Government. It is well established that a delegatee cannot acquire a status equivalent to that of delegator because despite delegating its power the delegator is never denuded of the same. On the other hand, it has an unrestricted right to strip off the powers of its delegatee. Consequently, it has to be held that even for the purpose of the I.D. Act, the State Government cannot be treated as an appropriate Government in relation to an industrial dispute concerning cement industry in terms of the definition of appropriate Government as set out in Clause (a) of Section 2 of the I.D. Act.

We are in respectful agreement with the view taken by the Karnataka High Court. Thus, it is clear that for the purpose of deciding the question whether the State Government is the appropriate Government in

relation to an industry for the purpose of sub-section 3 of Section 2 of MRTU & PULP Act, provisions of Section 39 of the Industrial Disputes Act and the notification issued under that provisions are not relevant.

14. In our opinion, in case the Industrial Court finds that the Central Government is the appropriate Government in relation to the Appellant, it can not, because of the notification issued under Section 39, hold that the State Government is the appropriate Government. In these facts and circumstances, in our opinion, following order would meet the ends of justice:-

O R D E R

(i) The judgment of the learned single Judge impugned in these Appeals is set aside.

(ii) The orders of the Industrial Court passed on the objections raised by the Appellant in both the cases are also set aside.

(iii) The Appellant is permitted to file a fresh

objection before the Industrial Court objecting to the jurisdiction of the Industrial Court to entertain the complaint on the ground that the State Government is not the appropriate Government in relation to Mazgaon Dock.

(iv) In case the objection is filed, the Industrial Court shall decide it in accordance with law. It is, however, made clear that in case the Industrial Court comes to the conclusion that the Central Government is the appropriate Government in relation to Mazgaon Dock, on the basis of notification issued under Section 39 it shall not hold that the State Government is the appropriate Government.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)